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UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW

Twenty-seventh session

SUMMARY RECORD OF THE 520th MEETING

Held at Headquarters, New York,
on Tuesday, 31 May 1994, at 10.30 a.m.

Temporary Chairman:	Mr. CORELL	(Under-Secretary-General, The Legal Counsel)
later:	Mr. HERRMANN	(Secretary of the Commission)
Chairman:	Mr. MORAN	(Spain)

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The meeting was called to order at 10.45 a.m.

OPENING OF THE SESSION

1. The TEMPORARY CHAIRMAN said that current international developments made the unification and harmonization of international trade law increasingly important. There was therefore a crucial need for a modern legal order governing cross-border commerce, and the United Nations Commission on International Trade Law (UNCITRAL) had made a valuable contribution in that area. The consensus in the international community that economic development required the existence of a legal order to enhance the rule of law also rendered the Commission's work more valuable, since, from a developmental perspective, the rule of law was no longer limited to constitutional and judicial issues, but extended to the establishment of a proper legal infrastructure which promoted trade and investment and facilitated the fair and speedy settlement of disputes.

2. The Commission had decided the previous year that the major item for consideration at the current session would be the draft model provisions on procurement of services, which would provide States with a comprehensive model law that would cover all types of procurement. The Commission's work on procurement was already eliciting interest in a number of countries, especially in newly independent States and States whose economies were in transition and where legislation on procurement often did not exist. Several States were already enacting procurement legislation based on the UNCITRAL Model Law on Procurement of Goods and Construction. Since procurement of services was a relatively new area in which many States did not have a developed practice, it was of particular importance that the model provisions should be practicable.

3. The Commission had also made a valuable contribution in the area of international arbitration. The UNCITRAL Arbitration Rules (1976) and the UNCITRAL Model Arbitration Law (1985), for example, had become the universal standards against which arbitration rules and national laws on international arbitration were assessed and modelled. The current draft guidelines for preparatory conferences in arbitral proceedings, which were intended to foster efficiency and predictability in international arbitrations, were an appropriate complement to existing UNCITRAL legal texts.

4. The proposed discussion of the implications of the entry into force of the Hamburg Rules (1978) was both timely and useful, since the current situation of the law of the carriage of goods by sea was unsatisfactory. He hoped that the Commission's deliberations would lead to an accelerated transition from the legal regime based on The Hague Rules to the modern regime of the Hamburg Rules. Other important topics for possible future work, namely cross-border insolvency and receivables financing, would also be discussed at the current session.

5. The promotion of the Commission as an institution and of its legal texts had become a regular part of the Secretariat's work. As a result of such activities and the political and economic changes that were taking place in many countries, there had been a considerable increase in requests for technical

(The Temporary Chairman)

assistance and for regional and national seminars. While efforts to meet those requests placed an additional strain on the Secretariat's human and financial resources, the Commission would undoubtedly adopt additional texts in the foreseeable future. Despite frequent appeals from the Commission and the General Assembly, contributions to the UNCITRAL Trust Fund for Symposia had been declining. Commission members should therefore urge their respective Governments to increase their contributions to the Fund or to second a lawyer for a year or so to the International Trade Law Branch of the Office of Legal Affairs.

6. Lastly, he paid a tribute to the memory of Professor Willem Vis, former Secretary of the Commission, who had passed away since the previous session.

The meeting was suspended at 11 a.m. and resumed at 11.35 a.m.

Mr. Herrmann (Secretary of the Commission) took the Chair.

ELECTION OF OFFICERS

7. Mr. JAMES (United Kingdom), seconded by Mr. GUENTCHEV (Bulgaria), said that he wished to nominate Mr. Moran (Spain) as Chairman of the twenty-seventh session on the understanding that the Chairman of the twenty-eighth session would be from the Eastern European group of States.

8. Mr. Moran (Spain) was elected Chairman by acclamation.

9. Mr. Moran (Spain) took the Chair.

ADOPTION OF THE AGENDA

10. Mr. MELAIN (France) said it was unfortunate that the Secretariat had failed to make available on time the French text of the report of the Working Group on the New International Economic Order on the work of its seventeenth session (A/CN.9/392). As a result, French-speaking delegations had not had time to consult their Governments on the report.

11. Mr. LEVY (Canada) said that the Secretariat was to be congratulated for its excellent work in faithfully reflecting the decisions reached by the Working Group after two sessions. He therefore hoped that the debate from those sessions would not be reopened, as such a procedure would delay the work of the current session.

12. After a procedural discussion in which Mr. CHOUKRI SBAI (Morocco), Mr. JAMES (United Kingdom), Mr. LOBSIGER (Observer for Switzerland) and Mr. BAVYKIN (Russian Federation) took part, Mr. HERRMANN (Secretary of the Commission), said that the Office of Conference Services in general and the French Translation Service in particular were understaffed and overworked, and that tight schedules did not improve matters. In the future, the Commission would reduce the workload it required of conference services. Turning to the scheduling of meetings, he said that the discussions on the complex subject of

(Mr. Herrmann)

procurement should be completed before the Commission took up the issue of arbitration.

13. The agenda was adopted.

NEW INTERNATIONAL ECONOMIC ORDER: PROCUREMENT

UNCITRAL MODEL LAW ON PROCUREMENT OF GOODS AND CONSTRUCTION AND GUIDE TO ENACTMENT OF THAT LAW (A/CN.9/393)

PROCUREMENT OF SERVICES (A/CN.9/389, A/CN.9/392 and A/CN.9/394)

14. Mr. HUNJA (International Trade Law Branch), introducing the item, said that the Working Group on the New International Economic Order had devoted its sixteenth and seventeenth sessions to the issue of procurement. At its sixteenth session, the report of which was contained in document A/CN.9/389, the Working Group had decided that a special procedure for procurement of services, entitled "Request for proposals for services" and contained in article 39 bis, would be required to expand the scope of the draft UNCITRAL Model Law on Procurement of Goods, Construction and Services to include procurement of services. The Working Group had taken two decisions at its seventeenth session which were reflected in the report of that session (A/CN.9/392) and the annex thereto, entitled "Draft UNCITRAL Model Law on Procurement of Goods, Construction and Services" and which would form the basis of discussions at the Commission's current session.

15. The first decision had been to include the model provisions on procurement of services in a separate chapter dealing with procurement of services, chapter IV bis, entitled "Request for proposals for services". That chapter provided three methods for selecting the successful proposal. The second major decision was that, in addition to requests for proposals for services, all the other methods that were available for procurement of goods and construction services would also be available for procurement of services. There had also been some discussion aimed at simplifying the structure of the Model Law in order to make it easier for States that were considering adopting legislation based on it to do so. The Working Group had also recommended the draft amendments to the Guide to Enactment of UNCITRAL Model Law on Procurement of Goods and Construction (A/CN.9/394) for adoption simultaneously with the amended draft Model Law.

16. Mr. WALLACE (United States of America) said that the drafting of the individual provisions was largely satisfactory and reflected the progress made. The two remaining issues concerned chapter IV bis, in connection with which the Commission should proceed as it had in the past, and the structure of the Model Law and the multiplicity of methods provided for, which gave rise to some concern. It might be preferable for the Commission to delegate responsibility for those issues to a Working Group, which could then present conclusions to the Commission itself.

17. Mr. LEVY (Canada) said that the multiplicity of methods should not present any particular problem, since States were free to make use of the methods they wished. The Commission could note that agreement to include all existing methods had been reached after difficult negotiations, but it would not be wise to reopen the question. The suggestion to refer the matter to a working group was not all that helpful, since the decision ultimately lay with the Commission itself. Much work had been expended in devising the structure before the Commission, and delegations should focus on the substantive work before the Commission rather than becoming embroiled in tangential issues.

18. Mr. JAMES (United Kingdom) agreed with the representative of Canada: the proposals before the Commission had emerged after much discussion, and the important point was for the Commission to reach the crucial article 16 as quickly as possible. In any event there would scarcely be time to schedule meetings of a working group.

19. Mr. MELAIN (France) endorsed the views of the previous two speakers. The availability of all methods had been agreed by consensus and the question should not be reopened. He agreed that it was important for the Commission in its entirety to deal with article 16 at an early stage.

20. Mr. CHATURVEDI (India) asked whether the decision to include services in the Model Law had been taken by the Commission or by the Working Group.

21. Mr. GOH PHAI (Singapore) supported the views expressed by the United Kingdom and agreed that the Commission should proceed with its substantive work as quickly as possible.

22. Mr. HUNJA (International Trade Law Branch) said that the question of the addition of services to the Model Law had been dealt with by the Commission at its twenty-sixth session and was reflected in paragraph 262 of its report to the General Assembly (A/48/17). The Commission should note that the Model Law on Procurement of Goods and Construction, already adopted by the General Assembly, would still be available to those States that were not interested in services.

23. Mr. CHATURVEDI (India) said that his delegation reserved its position on the draft Model Law.

24. The CHAIRMAN invited the Commission to consider the draft UNCITRAL Model Law on Procurement of Goods, Construction and Services, contained in the annex to document A/CN.9/392.

Preamble

25. The preamble was approved.

Article 1

26. Article 1 was approved.

Article 2 (a)

27. Article 2 (a) was approved.

Article 2 (b)

28. Article 2 (b) was approved.

The meeting rose at 1 p.m.